



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/152314

PRELIMINARY RECITALS

Pursuant to a petition filed August 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on December 12, 2013, at Milwaukee, Wisconsin.

NOTE: The record was held open until December 19, 2013, to give the Petitioner an opportunity to submit further medical documentation. No other documents were received by the designated deadline.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On March 15, 2013, Petitioner filed an application for Social Security Disability Benefits (SSDI), stating that she suffers from a disability due to rectal cancer -T3N0M0, pain, weight loss and nausea. (DDB file; testimony of Petitioner)
3. On April 4, 2013, Petitioner filed an application for disability-based Medicaid benefits, stating that she is disabled from rectal cancer. (DDB file; testimony of Petitioner)
4. On June 17, 2013, the Social Security Administration (SSA) denied Petitioner's application for SSDI. (DDB file; testimony of Petitioner)
5. On July 23, 2013, the DDB sent Petitioner a letter, denying her application for disability-based Medicaid benefits. (DDB file; testimony of Petitioner)
6. On August 16, 2013, Petitioner filed a request for reconsideration of the denial of her Medicaid application. (DDB file; testimony of Petitioner)
7. Petitioner did not file a request for reconsideration of the denial of her SSDI application. (Testimony of Petitioner)
8. On September 16, 2013, the DDB again denied Petitioner's application for Medicaid benefits and on September 20, 2013, the DDB forwarded Petitioner's file to the Division of Hearings and Appeals for review. (DDB file)

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner applied for Disability-based Medicaid benefits within a month of her application for Social Security Disability benefits. Her application for Social Security Disability (SSDI) benefits was based upon the same disabling conditions listed in her application for Medicaid. The SSA denied Petitioner's request for SSDI benefits on June 17, 2013, within 12 months of her application for

Medicaid. Petitioner alleges that her condition has changed, because she has begun a six month regimen of chemotherapy. However, she did not file a request for reconsideration. As such, there is no evidence that the SSA refused to consider a change in condition. Consequently, there is no jurisdiction for the Division of Hearings and Appeals to address the merits of Petitioner's case.

Other Information

Wisconsin Medicaid law will change significantly, effective January 1, 2013. On that date, a person is eligible for Wisconsin Medicaid if his income is at or below 100% of the federal poverty level; it will no longer be necessary that a recipient be under 19, elderly, blind, disabled, or a caretaker relative. The January 2014 version of Medicaid may be applied for online at Wisconsin's website, <https://access.wisconsin.gov>.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of December, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 20, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau